

GUIDELINES FOR APPEALING LOCAL BUSINESS TAXES

Virginia Department of Taxation

§ 1. LOCAL BUSINESS TAX APPEALS - FILING AN APPEAL WITH THE LOCALITY AND THE DEPARTMENT OF TAXATION.

§ 1.1. INTRODUCTION.

The administrative review process for local business taxes has been designed to encourage resolution of local business tax issues through an appeals process that includes review by the local assessing officer and appeal to the Tax Commissioner. Through this review process, a taxpayer can apply to the local assessing officer for review of a local business tax assessment with which the taxpayer disagrees. If the taxpayer is dissatisfied with the results of the local review, the taxpayer may appeal the final local decision to the Tax Commissioner, who will make a determination of the issues raised by the taxpayer.

These *Guidelines for Appealing Local Business Taxes (Guidelines)* have been written to conform as closely as possible to the BPOL administrative review process appearing in the 1997 *Guidelines for Business, Professional and Occupational License Tax*. They have been updated to reflect changes made to *Virginia Code* § 58.1-3983.1 by Chapter 525 of the 2002 *Acts of Assembly*, Chapter 196 of the 2003 *Acts of Assembly*, and Chapter 527 of the 2004 *Acts of Assembly*.

§ 1.2. ADMINISTRATIVE REVIEW PROCESS.

Discussion and charts illustrating the appeals process as presented in these *Guidelines* immediately follow.

NOTE: The following charts present an overview of the administrative review process and are intended to give general guidance to the local assessing officer and taxpayers. Local assessing officers and taxpayers should read these entire *Guidelines* to obtain complete information.

ADMINISTRATIVE REVIEW OF LOCAL BUSINESS TAX ASSESSMENTS

Taxpayer

<u>Critical Date</u>	<u>Function</u>	<u>Effect</u>	<u>Interest</u>	<u>Collection Activity</u>
Within one year of the date of an assessment	Application for Review filed with the local assessing officer	Local assessing officer makes a final written determination	Accrues	Stops when a complete Application for Review or a Notice of Intent to Appeal is filed (1)
Within 90 days of the date of the local assessing officer's final written determination	Appeal to the Tax Commissioner (2)	Tax Commissioner will make a determination of the appeal	Accrues	Stops when an Appeal to the Tax Commissioner or a Notice of Intent to Appeal is filed (3)

- (1) Taxpayers intending to appeal an assessment should immediately provide a written Notice of Intent to Appeal to the local assessing officer to stop collection activity. See Exhibit B for a suggested form "Notice of Intent to Appeal."
- (2) If the appeal is incomplete, taxpayer is informed and given 30 days to complete it.
- (3) Taxpayers intending to appeal a local assessing officer's determination should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner to stop collection activity.

As the chart above indicates, the taxpayer must first file an Application for Review with the local assessing officer before an appeal of a local business tax assessment can be made to the Tax Commissioner. The taxpayer has one year from the date of the local business tax assessment to file the Application for Review. Upon the timely filing of an Application for Review, the local assessing officer will make a final written determination on the taxpayer's application within 90 days after such application is filed. The taxpayer then has 90 days from the date of the local assessing officer's final written determination to appeal that determination to the Tax Commissioner.

ADMINISTRATIVE REVIEW OF LOCAL BUSINESS TAX ASSESSMENTS

Local Assessing Officer

<u>Critical Date</u>	<u>Function</u>	<u>Effect</u>	<u>Interest</u>	<u>Collection Activity</u>
Within 90 days of the filing of an Application for Review	Make a final written determination	Taxpayer has 90 days from date of final written determination to file an Appeal to the Tax Commissioner	Accrues	May begin or resume after a final written determination is made
Within 30 days of notice that appeal has been made to the Tax Commissioner	Make a request to address new issues or make a written reply to taxpayer's appeal (1)	Allows local assessing officer to respond to new issues or to the appeal, in general	Accrues	Stops until Tax Commissioner issues a final written determination

(1) If a request to address new issues is made, the appeal shall return to the local assessing officer and the local appeals process restarts. The local assessing officer must make a new final determination, which can be appealed to the Tax Commissioner.

As the chart above indicates, the local assessing officer must issue a final written determination within 90 days of the taxpayer's timely filing of an Application for Review. After issuing a final written determination, the local assessing officer may commence or resume collection activity on a local business tax assessment. Such collection efforts must be suspended, however, upon the taxpayer's filing of a Notice of Intent to Appeal the final local determination or upon the filing of an Appeal to the Tax Commissioner. The Taxpayer must furnish the local assessing official with a copy of the application for correction that it files with the Tax Commissioner. The Tax Commissioner will provide written notice to the local assessing officer when the taxpayer has filed a timely Appeal to the Tax Commissioner. The local assessing officer will then have 30 days to file a reply to the Appeal or to file a written request to address issues first raised on Appeal to the Tax Commissioner. If the local assessing officer files a written request to address new issues, the appeal shall return to the local assessing officer and the local appeals process starts anew. Once an appeal is returned to the local assessing officer, the local assessing officer must issue a new final written determination. This new determination can be appealed to the Tax Commissioner.

§ 1.3. APPLICABILITY OF THESE GUIDELINES.

Sections 1.4-1.11 cover the administrative review of local business tax assessments by the local assessing officer and the Tax Commissioner. With respect to issues other than questions of valuation, the administrative review process is effective for assessments of local business taxes made on and after January 1, 2000 (even if for an earlier taxable year). With respect to questions of valuation, the administrative appeals process is effective for assessments of local business taxes made on and after January 1, 2001 (even if for an earlier taxable year).

The existence, utilization, or attempt to utilize the administrative review process provided in these *Guidelines* shall not affect the taxpayer's right to pursue any other remedies authorized by law.

§ 1.4. DEFINITIONS.

Unless otherwise required by the context, the following words and terms shall have the following meanings:

"Appeal to the Tax Commissioner" means a taxpayer's application, filed with the Tax Commissioner pursuant to *Code of Virginia* § 58.1-3983.1 (D). The appeal should contain the following:

- A. Complete Application for Review (detailed below) as submitted to the local assessing officer.
- B. Local assessing officer's Final Local Determination.
- C. A statement explaining why the taxpayer believes the local assessing officer is in error. The statement should include analysis of how the local assessing officer misinterpreted or misapplied facts or authority and also include facts, issues and authority that the taxpayer believes the local assessing officer failed to take into consideration.

"Application for Review" means a taxpayer's written request filed with a local assessing officer for review of a local business tax assessment made pursuant to *Code of Virginia* § 58.1-3983.1(B). The application should contain the following:

- A. Name and address of taxpayer and taxpayer identification number.
- B. If applicant is different from the taxpayer, name and address of the applicant and a power of attorney or letter of representation.
- C. Copy of Notice of Assessment.

D. A statement explaining why the taxpayer believes the assessment is erroneous. The statement should also include facts, issues and authority that the taxpayer believes supports his position.

E. Statement of relief the taxpayer requests.

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to written notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer.

"Collection activity" means the assessor's use of any means, direct or indirect, to obtain payment on an assessment.

"Date of the assessment" means the date when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at the taxpayer's last known address. Self-assessments shall be deemed made as of the date a return is filed, or if no return is required, when the tax is paid.

"Filed." A document is "filed" as of the date it is postmarked for first class delivery via United States mail or when it is received if any other method of delivery, including facsimile transmissions, is utilized.

"Final Local Determination" means a writing setting out the local assessing officer's final determination on a taxpayer's Application for Review, including facts and legal authority in support of the local assessing officer's position on each issue raised by the taxpayer. Only such determinations may be appealed to the Tax Commissioner. Correspondence from the local assessing officer to the taxpayer simply reaffirming a contested assessment does not constitute a final local determination. See § 1.12.1 for a sample final local determination.

"Jeopardized by delay" includes a finding that the application is frivolous or that a taxpayer desires to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

"Local assessing officer" means the Commissioner of Revenue, or chief assessing officer or the chief assessing officer's designee.

"Local business tax" means machinery and tools tax, business tangible personal property tax (including, without limitation, computer equipment) and merchant's capital tax.

"Notice of intent to appeal" means the taxpayer's written statement filed with the local assessing officer that informs the local assessing officer of the taxpayer's intent to file an Application for Review. It also means the taxpayer's written statement filed with the local assessing officer and the Tax Commissioner informing of the taxpayer's intent to file an appeal to the Tax Commissioner.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his delegate, authorized pursuant to § 58.1-3983.1 (D) to issue a final determination on an appeal.

"Taxpayer" means a person, corporation, partnership, unincorporated association, or other business or representative thereof subject to a local business tax.

§ 1.5. CALCULATION OF DAYS IN FILING REQUIREMENTS.

For any limitation of time in making an Appeal to the Tax Commissioner, Application for Review, reply, or any other information or material mentioned in these *Guidelines*, should the last day of such limitation period fall on a Saturday, Sunday, or holiday observed by the Commonwealth of Virginia, the Appeal, Application, reply, or other information or material may be filed on the next business day. For any limitation of time appearing in these *Guidelines*, the limitation shall begin to run on the day next following the event that triggers the time limitation.

§ 1.6. SUSPENSION AND COMMENCEMENT/RESUMPTION OF COLLECTION ACTIVITY.

Collection activity is suspended upon:

- A. The local assessing officer's receipt of a timely and complete Application for Review.
- B. The local assessing officer's receipt of a Notice of Intent to Appeal a final local determination to the Tax Commissioner.
- C. The local assessing officer's receipt of notice of the filing of an Appeal to the Tax Commissioner.

The local assessing officer must notify the treasurer or other collection official when collection activity must be suspended.

Collection activity may commence or resume upon:

- A. The local assessing officer's determination that an assessment subject to an Application for Review or an Appeal to the Tax Commissioner is jeopardized by delay.
- B. The local assessing officer's issuance of a final local determination.
- C. The local assessing officer's receipt of written notice from the Tax Commissioner that the taxpayer has failed to timely file an Appeal to the Tax Commissioner after the taxpayer has initially filed a Notice of Intent to Appeal.
- D. The local assessing officer's receipt of a final written determination issued by the Tax Commissioner in cases where the local business tax has not been totally abated.
- E. The local assessing officer's receipt of a copy of a taxpayer's request to withdraw an Appeal to the Tax Commissioner.

§ 1.6.1. Interest during appeal.

- A. Assessments subject to an Application for Review or Appeal to the Tax Commissioner will continue to accumulate interest until paid or abated.
- B. Taxpayers are encouraged to pay the undisputed portion of any assessment to avoid accrual of interest while an Application for Review or Appeal to the Tax Commissioner is pending. Any such payment will not be deemed a waiver of the taxpayer's remedies provided in these Guidelines.

§ 1.7. APPLICATION FOR REVIEW - LOCAL ASSESSING OFFICER.

§ 1.7.1. Time limitations.

A taxpayer assessed with a local business tax may file an Application for Review with the assessing officer of a locality within one year of the date of the assessment.

§ 1.7.2. Good faith Applications for Review; Frivolous Applications for Review; Acknowledgment of filing of Application for Review.

- A. The Application for Review must be filed in good faith. The Application for Review must not be frivolous or otherwise filed for purposes of avoiding or

delaying collection of local business taxes.

- B. Upon receipt of the complete Application for Review, the local assessing officer shall acknowledge in writing to the taxpayer receipt of the Application for Review.

§ 1.7.3. Final Local Determination.

- A. Provided the application is filed in good faith and not merely for purposes of delay, the local assessing officer shall conduct a full review of the facts, assertions, and authorities submitted by the taxpayer.
- B. During this process, the local assessing officer may hold conferences with the taxpayer, conduct further inquiries, or perform an audit as required to reach a fair conclusion on the issues presented by the taxpayer.
- C. Within 90 days after an Application for Review is filed, the local assessing officer shall issue a signed and dated Final Local Determination. This 90 day time frame shall begin to run after a taxpayer has complied with all reasonable requests made by the local assessing officer for the sole purpose of issuing a final local determination, including a request for an audit. Each final written determination shall contain the following notice:

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at P.O. Box 1880, Richmond, Virginia 23218-1880.
- Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin.
- Guidelines for Appealing Local Business Taxes and the applicable *Code of Virginia* sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer or at the Virginia Department of Taxation. This information is also available in the Tax Policy Library section of the Department of Taxation's web site, located at www.tax.state.va.us.

§ 1.7.4. Failure to issue a Final Local Determination

If a taxpayer's application for review has been pending for more than two years without the issuance of a final local determination, the taxpayer may, upon giving 30 days written notice to the local assessing officer, elect to treat the application as denied and appeal the assessment directly to the Tax Commissioner.

§ 1.8. APPEAL TO THE TAX COMMISSIONER.

§ 1.8.1. Time limitations.

The taxpayer has 90 days from the date of the local assessing officer's Final Local Determination to file an Appeal to the Tax Commissioner. The address is:

Tax Commissioner
Post Office Box 1880
Richmond, Virginia 23218-1880

The Tax Commissioner may permit an extension of this period for good cause shown.

§ 1.8.2. Notice of Intent to Appeal filed but Appeal to the Tax Commissioner not timely filed.

If a Notice of Intent has been filed with the Tax Commissioner, the Tax Commissioner shall give written notice to the local assessing officer and to the taxpayer of the taxpayer's failure to file an Appeal to the Tax Commissioner within the time provided for in these Guidelines.

§ 1.8.3. Jurisdiction.

The Tax Commissioner shall determine whether he has jurisdiction to hear the appeal within 30 days of receipt of the Taxpayer's application for correction. The Tax Commissioner will issue a written determination addressing jurisdiction only in cases in which: (1) the question is specifically raised by the local assessing officer, or (2) the Tax Commissioner determines that the appeal is not within his jurisdiction.

§ 1.8. 4. Incomplete appeals to the Tax Commissioner.

- A. If the Tax Commissioner receives an appeal that is incomplete, the taxpayer will be given notice stating the information was incomplete. The local assessing officer will be provided a copy of this notice. The taxpayer will be allowed 30 days from the date of such notice to provide the information or 90 days from the date of the local assessing officer's Final Local Determination, whichever is longer.

- B. Additional time to produce the missing items will be granted in compelling circumstances but only if the taxpayer makes such an extension request in writing within the time allowed under § 1.8.4 A herein. A copy of the request for additional time shall be mailed to the local assessing officer.
- C. If the taxpayer fails to provide missing item(s) within the time allotted, the Tax Commissioner may proceed to decide the appeal based on available information making such inferences from the failure or refusal to provide requested information as may be appropriate under the circumstances. If sufficient information is unavailable to permit an adequate analysis of the issues, the appeal will be dismissed.

§ 1.8.5. Tax Commissioner receipt of a complete appeal.

The Tax Commissioner shall send a notice of receipt of an appeal or a letter of intent to appeal to the local assessing officer and to the taxpayer.

§ 1.8.6. Local assessing officer's reply; New issues in taxpayer's appeal.

- A. The local assessing officer has 30 days from the date of the notice of receipt of an appeal to:
 - 1. File a written reply to the Tax Commissioner with additional information.
 - 2. File a written request to address new issues raised by the taxpayer.

If a written request to address new issues is filed, the appeal shall return to the local assessing officer to address new issues.

- B. Whenever an appeal is returned to the local assessing officer because the local assessing officer has made a written request to address new issues, the local appeals process has started again. At this point, the local assessing officer must make a new determination that can then be appealed to the Tax Commissioner as described above.
- C. The Tax Commissioner may request that the local assessing officer make a new Final Local Determination on any issues raised for the first time on appeal. The local assessing officer, however, is not required to make a new Final Local Determination but rather can provide relevant information to the Tax Commissioner who will then make a final written determination. If the local assessing officer issues a new Final Local Determination, that determination can then be appealed to the Tax Commissioner as described above.

§ 1.8.7. Tax Commissioner's final determination of the taxpayer's appeal.

- A. In determining an appeal, the Tax Commissioner shall presume the local assessing officer's Final Local Determination is correct.
- B. The Tax Commissioner shall issue a written final determination on the taxpayer's appeal within 90 days of the last day a reply or a written request to address new issues can be made. The taxpayer and local assessing officer will be notified if a longer period is required. Such longer period shall not exceed 60 days, and the Tax Commissioner shall notify the affected parties of the reason necessitating the longer period of time.
- C. The Tax Commissioner may make requests for relevant information during the appeal process. This can include meetings and inspections of facilities. When the request for information is initiated during the 60-day extension period, the Tax Commissioner shall have 60 days within receipt of such information to issue his final determination. Should the taxpayer fail to respond within a reasonable time to a request for reasonably available information, the Tax Commissioner may make a written final determination stating that the local assessing officer's Final Local Determination is correct.
- D. Written communications sent by the taxpayer or local assessing officer to the Tax Commissioner must also be mailed or delivered to the other party. Such communications shall include a signed and dated certificate that copies were provided, as required by these Guidelines, showing the date of mailing or delivery and the name and address of the addressee.
- E. The taxpayer or local assessing officer may request a meeting to discuss the issues presented by the appeal.
- F. The Tax Commissioner's final determination shall provide citations to sources of information that provide significant guidance, input, or serve as a basis for the final determination. The final determination may include an order correcting an assessment pursuant to § 58.1-1822.

§ 1.8.8. Withdrawal of appeal.

The taxpayer may withdraw his appeal to the Tax Commissioner by making such a request in writing any time prior to the issuance of the Tax Commissioner's final determination. The taxpayer shall mail a copy of the request to withdraw the appeal to the local assessing officer.

§ 1.9. CONFIDENTIALITY - DETERMINATIONS.

The determinations of the Tax Commissioner made available to the public shall eliminate any reference to the identities of the taxpayer and the local assessing officer.

§ 1.10. APPEAL TO THE CIRCUIT COURT.

Following an order or a final written determination by the Tax Commissioner, the taxpayer or the local assessing officer may file an appeal to the circuit court pursuant to § 58.1-3984. The burden shall be on the appealing party to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to the appeal merely because the Tax Commissioner has issued a final determination.

§ 1.11. TAXPAYER'S REQUEST FOR A WRITTEN RULING.

A taxpayer may request a written ruling from the local assessing officer regarding the application of a local business tax to a specific set of facts. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling issued by the local assessing officer may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the Guidelines issued by the Department of Taxation upon which the ruling was based, or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling that later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

§ 1.12. TAX COMMISSIONER'S ADVISORY AND INTERPRETATIVE POWERS.

The Tax Commissioner has the authority to issue advisory written opinions in specific cases as requested to interpret a local business tax and matters related to the administration thereof. The Tax Commissioner is not required to interpret any local ordinances. Opinions issued pursuant to § 58.1-3983.1 are not to be considered as an interpretation of any other tax law.

Examples of the issues upon which the Commissioner may render advisory opinions include:

- Interpretation of changes made to the business tangible personal property tax, machinery and tools tax and merchant's capital tax statutes.
- Questions relating to both state law and local ordinances.
- Whether a business qualifies as a manufacturer under existing court decisions.

- How the tangible property of a manufacturer is to be valued.
- Questions of situs of property.
- Generic questions of valuation.

The form for use in the filing of a request for a written advisory opinion from the Tax Commissioner is set forth in § 1.13.

§ 1.13. APPEAL EXHIBITS.

§ 1.13.1. Exhibit A. Final Local Determination

<DATE>

<Name>
<Organization>
<Address>

Re: § 58.1-3983.1(B) Final Local Determination of: <Specify local business tax>
<Taxpayer's name>
<Date of Assessment>

Dear <Salutation>:

Enclosed please find a final assessment for <list years>. After considering your Application for Review made on <date>, a final determination on your application has been reached. We have based our determination upon the following grounds and relevant facts:

<Facts>

You (or your client) have challenged:

<Specify the facts and issues presented in the Application for Review>

Determination

Based upon the facts we discovered and applicable local statutes, state statutes and case law, we have determined:

<Final determination>

You may appeal this Final Local Determination to the Tax Commissioner as follows:

- If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at P.O. Box 1880, Richmond, Virginia 23218-1880.
- **Collection activity** may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin.

The Guidelines for Appealing Local Business Taxes and the applicable *Code of Virginia* sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer and at the Virginia Department of Taxation.

Sincerely,

<name of assessor>

1.13.1. Exhibit B. Suggested Notice of Intent to Appeal

<Date>

Tax Commissioner (1)
Post Office Box 1880
Richmond, Virginia 23218-1880

Re: 58:1-3983.1(D) Appeal of: <Specify local business tax>
<Taxpayer's name>
<Locality>
<Date of Final Local Determination>

Dear <Salutation>:

This is to notify you that <the taxpayer> intends to apply to you for correction of the above-referenced final determination. By a copy of this letter, I am notifying the local assessing officer of this intent.

Sincerely,

<Taxpayer or its representative>

c: <name of assessor>

(1) Alternately, a Notice of Intent to Appeal may be directed to the local assessing official, with a copy to the Tax Commissioner.

Request for a Local Business Tax Advisory Opinion

C. Before the Department of Taxation can respond to this request, this form must be signed. If the requesting party is a locality, this form must be signed by the Commissioner of the Revenue, Director of Finance, or other person authorized to sign on behalf of such persons. If the requesting party is a Business, this form must be signed by an authorized representative of the Business.

Signature:

I understand that the department may contact [my local tax official or, if an opinion is being requested by a locality, the Business,] for purposes of answering my question(s).

Signature:

Title:

